

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Aerco Broadcasting Corporation	)	Facility ID No. 4077
Licensee of Station WSJU-TV	)	NAL/Acct. No. 201441420003
San Juan, Puerto Rico	)	FRN: 0003759560

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 11, 2014****Released: December 12, 2014**

By the Commission:

1. In this Memorandum Opinion and Order, we deny the September 12, 2014 Application for Review (the “AFR”) filed by Aerco Broadcasting Corporation (“Aerco”), licensee of Station WSJU-TV, San Juan, Puerto Rico (the “Station”). Aerco seeks review of the Memorandum Opinion and Order<sup>1</sup> issued by the Video Division, Media Bureau (the “Bureau”) denying reconsideration of a Forfeiture Order<sup>2</sup> which found that Aerco was liable for a \$20,000 forfeiture for its apparent willful and repeated violations at the Station of Sections 73.3526(e)(11)(i) & (iii) of the Commission’s rules (“Rules”) for failure to timely electronically file issues/programs lists and Children’s Television Programming Reports and Section 73.3514(a) of the Rules for failure to report those violations in its license renewal application for the Station.<sup>3</sup>

2. At the outset, Aerco does not dispute that it committed the violations. Instead, it continues to maintain that the forfeiture should be “overturned or revised.”<sup>4</sup> In support of this contention, Aerco raises three issues on review that it also argued below: (1) that, in assessing the forfeiture for failure to file issues/programs lists, the Bureau should have taken into consideration the Station’s history of providing locally produced public affairs programming; (2) that, in assessing the forfeiture for failure to file timely the Station’s Children’s Television Programming Reports, the Bureau failed to consider that certain reports were filed soon after the deadline and that no members of the public complained of the violations; and (3) that the Bureau should have reduced the forfeiture amount based on Aerco’s claimed inability to pay. Aerco also argues for the first time that in assessing its failure to report the violations in its renewal application, the Bureau should have taken into account that Aerco did not act with intent to deceive. Because Aerco failed to make this argument to the Bureau, the Bureau never had the opportunity to pass on that contention. Accordingly, Aerco may not introduce it here. To the extent that the AFR contains this argument, we dismiss the AFR.<sup>5</sup>

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<sup>1</sup> *Aerco Broadcasting Corporation*, Memorandum Opinion and Order, DA 14-1184 (Vid. Div. Aug. 14, 2014) (“*Memorandum Opinion and Order*”).

<sup>2</sup> *Aerco Broadcasting Corporation*, Forfeiture Order, 29 FCC Rcd 5730 (Vid. Div. 2014) (“*Forfeiture Order*”).

<sup>3</sup> FCC File No. BRC DT-20120928ACZ.

<sup>4</sup> AFR at 1.

<sup>5</sup> See 47 C.F.R. § 1.115(c). Aerco’s inability to pay argument was based on its history of operating losses. See Response at 4-7; Supplemental Response at 1; AFR at 5 to 8. When evaluating an individual or entity’s inability to pay a claim, the Commission has determined that, in general, gross income or revenues are the best indicator of an ability to pay a forfeiture (emphasis added). See, e.g., *Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000) (evaluating licensee’s ability to pay based on the forfeiture as a percentage of gross revenue);

(continued....)

3. Upon consideration of the Application for Review and the entire record, we conclude that Aerco has not demonstrated that the Bureau erred. The Bureau, in the *Memorandum Opinion and Order*, properly decided the matters raised, and we uphold its decision for the reasons stated therein.

4. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and Sections 1.115(c) and (g), of the Commission's rules, 47 C.F.R. § 1.115(c),(g), the Application for Review of Aerco Broadcasting Corporation IS DISMISSED IN PART and, in all other respects, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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*Forfeiture Order*, 29 FCC Rcd at 5213. The forfeiture issued against Aerco represented approximately 2.9 percent of Aerco's \$693,089 average annual gross revenue between 2010 and 2013. Based on Commission precedent, such a forfeiture is not excessive. *See e.g., Hoosier Broadcasting Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 8640 (2000)(forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues). In its AFR, Aerco also argues that the Bureau should have cancelled the forfeiture just as the Enforcement Bureau did in one of its recent cases, *Jeannine M. Mason*, Order, 29 FCC Rcd 10070 (EB 2014); AFR at 8. Aerco itself notes that the Enforcement Bureau's decision in *Jeannine M. Mason* to cancel the forfeiture was "based upon gross income and tax returns." *Id.* Accordingly, the Bureau's decision below is not only consistent with Commission precedent for determining when forfeiture reduction is appropriate, but also the Enforcement Bureau's decision in *Jeannine M. Mason*.